

EXECUTIVE SECRETARIAT
ROUTING SLIP

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
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9	Chm/NIC				
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16	SA/IA				
17	AO/DCI				
18	C/IPD/OIS				
19	NIO/Econ	X			
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		SUSPENSE _____ Date			

Remarks Please provide comments for passage to Treasury, by 1500 hrs, 16 Jan 85.

STAT

FOR Executive Secretary
14 Jan 85
Date



OFFICE OF THE SECRETARY OF THE TREASURY
WASHINGTON, D.C. 20220

Executive Registry

85- 188

January 11, 1985

MEMORANDUM FOR	OVP	-	DONALD P. GREGG
	STATE	-	NICHOLAS PLATT
	DEFENSE	-	R. J. AFFOURTIT
	JUSTICE	-	J. MICHAEL SHEPHARD
	AGRICULTURE	-	RAYMOND LETT
	COMMERCE	-	HELEN ROBBINS
	OMB	-	ALTON J. KEEL, JR.
	CIA	-	
	USTR	-	DENNIS WHITFIELD
	NSC	-	ROBERT KIMMIT
	JCS	-	MASTER SGT ORR
	CEA	-	WILLIAM NISKANEN
	OPD	-	LEHMANN LI
	WH	-	CRAIG FULLER

STAT

Subject: Interagency Group on International Economic Policy (IG-IEP)

Member agencies have reached agreement on a SIG-IEP report on extraterritorial application of U.S. laws. In accordance with the procedures agreed to by the SIG-IEP, Secretary Regan will submit to President Reagan the report along with letters from the President to Executive Branch and independent regulatory agencies.

Attached for your review and comment are draft transmittal letters from the President to relevant agencies. A copy of the interagency cleared report is also attached.

Please submit your comments on the draft letters to Frank Vukmanic at 566-2386 by c.o.b. Wednesday, January 16.

Christopher Hicks
Executive Secretary and
Executive Assistant to the Secretary

Attachments

TO: HEADS OF EXECUTIVE AGENCIES
SUBJECT: MANAGING THE PROBLEM OF "EXTRATERRITORIALITY"

A number of strong U.S. policy, regulatory and law enforcement interests have led to the application of U.S. law to persons and conduct abroad. Such application at times has clashed with the interests of other governments and produced political, economic and legal disputes. The objections of other governments have resulted in some instances not only in inter-governmental disagreements but in actual impediments to the accomplishment of U.S. policies and enforcement of U.S. laws over the long term.

Bearing in mind these problems, the United States has been actively engaged in both bilateral and multilateral discussions on the overall issue of conflicts of jurisdiction ("extraterritoriality"). In May, the O.E.C.D. member countries endorsed a general set of considerations and "practical approaches" to these problems. In essence, the O.E.C.D. members, including the United States, have agreed to develop bilateral notice and consultation procedures, give notice as soon as practicable of proposed new laws or regulations with significant potential for conflicts over "extraterritoriality", and give prompt and full consideration to proposals that may be made by other Member countries in any such consultations that would lessen or eliminate conflicts.

To manage this important set of problems successfully, to implement the O.E.C.D. arrangements and to improve interagency coordination on issues raising "extraterritorial" concerns, each executive agency is directed to act in accordance with the guidelines and procedures set forth in the attached paper on "Conflicting Requirements ("Extraterritoriality"), Managing the Problem."

Ronald W. Reagan

TO: HEADS OF INDEPENDENT REGULATORY AGENCIES

SUBJECT: MANAGING THE PROBLEM OF "EXTRATERRITORIALITY"

A number of strong U.S. policy, regulatory and law enforcement interests have led to the application of U.S. law to persons and conduct abroad. Such application at times has clashed with the interests of other governments and produced political, economic and legal disputes. The objections of other governments have resulted in some instances not only in inter-governmental disagreements but in actual impediments to the accomplishment of U.S. policies and enforcement of U.S. laws over the long-term.

Bearing in mind these problems, the United States has been actively engaged in both bilateral and multilateral discussions on the overall issue of conflicts of jurisdiction ("extraterritoriality"). In May, the O.E.C.D. member countries endorsed a general set of considerations and "practical approaches" regarding these problems. In essence, the O.E.C.D. members, including the United States, have agreed to develop bilateral notice and consultation procedures, give notice as soon as practicable of proposed new laws or regulations with significant potential for conflicts over "extraterritoriality", and give prompt and full consideration to proposals that may be made by other Member countries in any such consultations that would lessen or eliminate conflicts.

To manage this important set of problems successfully, to implement the O.E.C.D. arrangements and to improve interagency coordination on issues raising "extraterritorial" concerns, I have directed executive agencies to act in accordance with the guidelines and procedures set forth in the attached paper on "Conflicting Requirements ("Extraterritoriality"), Managing the Problem." I invite your agency's adherence to the guidelines and procedures set forth in this paper. Not only would such adherence greatly assist in managing the problems of "extraterritoriality" and ultimately ensure better cooperation by foreign governments, but it would also help to achieve your agency's goals.

Ronald W. Reagan

**CONFLICTING REQUIREMENTS ("EXTRATERRITORIALITY")
MANAGING THE PROBLEM**

I. INTERNAL COORDINATION

A. Where U.S. actions which impinge upon foreign jurisdictions are contemplated, comity calls for us to consider the potentially conflicting sovereign interests, laws or policies of those jurisdictions in deciding whether and how to act. This is also required by our need to have foreign cooperation on export, law enforcement, and other international matters and to avoid unnecessary harm to our bilateral relations. It is Executive Branch policy to do so.

B. As a general matter, each Executive Branch agency with regulatory or law enforcement responsibilities which proposes to take actions with extraterritorial impact has primary responsibility to assure proper consideration of such foreign interests, laws or policies.

C. An agency which proposes to take an action which is directed at conduct abroad and which it has reason to believe has significant potential for raising concerns over extraterritoriality on the part of a foreign state^{1/} will notify and consult with the Secretary of State or his designee, subject to the constraints imposed by the relevant

^{1/} As a general rule, this category would not include such matters as: action taken under established working arrangements with the competent authorities of foreign governments, whether in law enforcement generally, or under specific arrangements such as tax or customs agreements; routine license denials under clearly established foreign assets, munitions control or re-export control guidelines where the agency concerned knows of no factors which indicate special foreign government concerns; actions taken by officers stationed abroad within established country-team arrangements with the foreign government concerned; and actions relating to the requirements for doing business in the United States, such as quality or labelling requirements for goods to be sold here.

- 2 -

legal and operating requirements.^{2/} This category of action would include significant statements of official U.S. views on extraterritoriality or conflicting requirements, the requirements of international law or comity in such matters, or foreign government interests or positions regarding them. The consultation is intended to assist the agency in considering the foreign interests, laws or policies, alternatives to unilateral action, and means to minimize difficulties.

D. Notice and consultation procedures should ensure against undue operational burdens^{3/} or delays, duplication of existing arrangements and the introduction of improper considerations into the administration of the responsibilities of the respective agencies. The normal minimum time for notification should be five working days in advance of the proposed action.

E. Agencies will notify the Secretary of State or his designee, or the Chief of the U.S. Diplomatic Mission, of investigative activity proposed to be carried out by U.S. officials or agents in a foreign jurisdiction for which the consent of the foreign government has not yet been obtained.

^{2/} Operating requirements would generally preclude notice of actions which are both high volume and of largely de minimis potential for creating extraterritoriality problems, such as export license pre-clearance inquiries or tax inquiries mailed to a person abroad. Meaningful coordination may be limited or precluded, in certain cases, by: grand jury, tax information and other legal secrecy requirements; concern for human life or safety; time constraints and the need to avoid disclosures which might prejudice litigation, investigation, or sensitive sources and methods.

^{3/} For operational reasons, the Department of Justice would not set up procedures to identify for consultation civil or criminal law enforcement matters handled outside of Department of Justice Washington headquarters, but would identify for consultation matters handled or considered in Washington, such as the Export Administration Act, including its antiboycott provisions, munitions control, International Emergency Economic Powers Act, Trading With the Enemy Act, neutrality laws, anti-trust (under existing procedures), and the enforcement of off-shore subpoenas for documents in jurisdictions likely to object to such actions.

- 3 -

F. Such coordination will not affect the legal responsibilities and authorities of the notifying agencies.

II. NOTIFICATION OF FOREIGN GOVERNMENTS

A. The United States will implement the understanding on notice and consultation regarding U.S. actions which impose conflicting requirements on multinational enterprises, reached within the O.E.C.D., and will apply the same general considerations and practical approaches to other governmental actions which have significant potential for raising concerns in friendly nations regarding conflicting requirements or extraterritoriality.

B. The United States, accordingly, is prepared to:

1. Develop mutually beneficial, practical and appropriately safeguarded bilateral arrangements, formal or informal, for notification to and consultation with other friendly governments. Such arrangements would take into consideration the needs and concerns of both countries, as appropriate.

2. Give prompt and sympathetic consideration to requests for notification and bilateral consultation on an ad hoc basis by a country which considers that its interests may be affected by a United States measure with extraterritorial effect.

3. Inform the other appropriate concerned countries as soon as practicable of new legislation or regulations proposed by the Administration which have significant potential for conflict with the legal requirements or established policies of those countries and for giving rise to conflicting requirements being imposed on persons or firms in their territory. As appropriate, the United States will seek consultations to discuss with other countries mutual interests in such areas as security, export control, law enforcement and business regulation. Such consultations could provide a forum for discussing mutual security, political, legal and other concerns.

4. Give prompt and sympathetic consideration to requests by friendly countries for consultations under multilateral arrangements in appropriate cases.

5. Give prompt and full consideration to proposals which may be made by other countries in bilateral or multilateral consultations that would lessen or eliminate conflicts.

- 4 -

C. Under arrangements for notification or consultation through the Department of State regarding action of another agency, the consent of that other agency will be required.

D. Where appropriate, notice and consultation arrangements would be negotiated in the context of efforts to secure enhanced cooperation with foreign governments in meeting U.S. objectives. In particular, it is the policy of the United States to seek mutual assistance arrangements in law enforcement and to further that policy through the inclusion of bilateral arrangements for notice and consultation.

III. LEGAL EFFECT

This statement of policy, including the provisions regarding internal consultations and notification of and consultation with foreign governments, is intended solely for the guidance of the departments and agencies of the United States Government with regulatory or law enforcement responsibilities. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable by law by any party in any civil or criminal proceeding.